



HOUSE OF LORDS

Baroness Anelay of St Johns
Chair, International Relations and Defence Committee

21 January 2022

Dear Joyce,

Memorandum of Understanding pertaining to Section 3 of the Trade Act 2021

Many thanks for your letter of 21 January 2022 (reproduced below) containing a Memorandum of Understanding that (1) acknowledges the role the International Agreements Committee could play in providing early warning of negotiations that might engage Section 3 of the Trade Act 2021, (2) sets out how our committees would collaborate should a sub-committee be appointed under that Section, and (3) outlines your committee's processes more generally.

I confirm that the International Agreements Committee has agreed to the arrangements set out in the Memorandum of Understanding. This reply will therefore place on record the shared understanding of the two committees on this matter.

Yours sincerely,

Baroness Hayter
Chair, International Agreements Committee

Baroness Hayter of Kentish Town
Chair, International Agreements Committee

21 January 2022

Dear Dianne,

Memorandum of Understanding pertaining to Section 3 of the Trade Act 2021

On 1 December 2021, the House agreed to a Liaison Committee¹ report which designated the International Relations and Defence Committee (IRDC) as the committee responsible for conducting any inquiry to consider whether "there exist credible reports of a genocide" in the territory of a prospective counter-party to a Free Trade Agreement (FTA) with the UK. The report followed the passage of the Trade Act 2021 ("the Trade Act"), section 3 of which

¹ Liaison Committee, 3rd Report (Session 2021-22, HL Paper 41)

mandated each House to designate a committee for these purposes. In order to fulfil this responsibility, the IRDC will be given the power to appoint a sub-committee to carry out the inquiry. The House is likely to be asked to give the IRDC this power in February 2022.

The Liaison Committee's report noted that the two committees with relevant remits were the IRDC and the International Agreements Committee (IAC). It noted the IAC's role meant that it was likely to have early notice of the prospect of an FTA and suggested "that a memorandum of understanding between the IAC and the IRDC might be an appropriate way of ensuring effective and timely communication regarding this matter."

I am grateful to you and the members of the IAC for their constructive collaboration since the publication of the Liaison Committee's report. This letter sets out what I think is the basis of a memorandum of understanding based on the discussions we have had, not only about the way the IAC might notify the IRDC of the prospect of an FTA but also about the IRDC's process more generally. Although the likelihood and specific context of any inquiry are inevitably unknown at this stage, I hope this exchange will be of assistance to all concerned in the event an inquiry under s. 3 of the Trade Act is needed.

Decision over initiating an inquiry

In accordance with the House's decision, the decision over whether or not to initiate an inquiry will rest with the IRDC. However, the ability of the IAC to provide early warning of an FTA will be critical to ensuring that where the prospect of an FTA is clear, it is known by IRDC at as early a stage as possible. I know that the secretariats of the two committees have discussed this and will work together as necessary to ensure relevant information is shared in a timely way.

Composition of sub-committee

The Liaison Committee's report suggested that the Chair of the IRDC consult the usual channels before the IRDC appoints a sub-committee. The decisions over the membership of the sub-committee will clearly depend on factors only known at the time of those decisions. Such factors include the availability of members for the expected duration of what is likely to be an intensive inquiry and the identity of the counterparty to the prospective FTA and any associated political dimensions. But establishing some expectations now about that process may be helpful given the possibility that a sub-committee needs to be appointed quickly.

In the interests of maintaining public confidence that the sub-committee's process is fair, I suggest that the chair of the sub-committee ought to be a member who has not taken a public position on either side of the argument over whether genocide has occurred in the counterparty to the FTA. Because of the need for the sub-committee to conduct its work at pace and a way that is as efficient as possible, I also suggest that it be smaller than a full select committee. Thus it might have six rather than 12 members, allowing for the standard proportions of parties and groups, in this case meaning two of the Conservative and Labour benches and one each of the Liberal Democrat and Crossbench groups. Consideration would be given to whether it would be helpful to have representation from the IRDC or the IAC on the sub-committee. As we discussed, in principle this would be desirable but it would need to be balanced with wider considerations about the composition of the sub-committee, and should be part of the discussion with the usual channels over sub-committee appointments. If the Chair of the sub-committee was not a pre-

existing member of the IRDC then the IRDC may want to extend an invitation to that member to attend private meetings as necessary in order to keep the parent committee informed of the sub-committee's progress. Given the possibility that the IAC may well be conducting its own scrutiny in parallel, the IAC and IRDC will similarly need to stay in communication with each other.

Given the likelihood that the sub-committee will need to take a significant proportion of its evidence from witnesses who are overseas, and the increasing effectiveness of available video-conferencing technology, the sub-committee may well want to meet virtually rather than physically, although this would of course be a matter for the sub-committee itself to decide.

Given the wording of the Liaison Committee's report and established practice on other sub-committees, I have consulted the usual channels on this section of the note.

Resourcing and conduct of inquiries

The Liaison Committee's report noted that the conduct of an inquiry under s. 3 of the Trade Act would be "likely to be demanding", requiring complex and expert legal and specialist advice and that it is impossible to predict when this might be required. Duncan Sagar is working with Committee Office colleagues to develop detailed contingency plans, including the provision of specialist training and support, such as was provided for the team supporting the ad hoc committee on the prevention of sexual violence in conflict, given the potentially very harrowing nature of the committee's work and the need to engage sensitively with witnesses who may have experienced serious trauma.

The act limits the scope of an inquiry to considering whether there are "credible reports" of genocide, as defined within Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, within the territory of a party to a prospective FTA. It will be for the sub-committee to determine whether reports of genocide are credible or not. In making this determination the committee will need to draw conclusions based on the evidence it receives and any publicly available legal opinion.

At this point it is difficult to predict the timescales for an inquiry, which will depend on the circumstance of the case. In any circumstances a challenge for the sub-committee will be to balance ensuring that it has a thorough enough evidence base to come to a robust conclusion with producing a report to a timescale which informs the House at a sufficiently early stage for the resulting debate and any further scrutiny by the wider House. Doing this will be important if the resulting report and debate are to influence the Government's approach to any negotiations over a prospective FTA.

Yours, as ever

A handwritten signature in cursive script, reading "Jayce Anelay".

Baroness Anelay of St Johns
Chair, International Relations and Defence Committee